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## MONTANA LEGISLATIVE HISTORY

Chapter NA Session L 1983  
Bill House JR36 Senate       

History and final status sheet X  
Introduced bill X  
Fiscal note NA  
Third reading bill X  
Final version of bill X

House Committee on Natural Resources

Hearing date(s)\* 3-23  
\_\_\_\_\_  
\_\_\_\_\_

Senate Committee on Agriculture

Hearing date(s)\* 4-8  
\_\_\_\_\_  
\_\_\_\_\_

Executive action (vote) date(s)\* 3-23

Executive action (vote) date(s)\* 4-8

Comm. Report 3-23

Comm. Report 4-8

Floor 2nd reading & vote 3-30

Floor 2nd reading & vote 4-11

Floor 3rd reading & vote 3-31

Floor 3rd reading & vote 4-12

Conference or Free Conference Comm. \_\_\_\_\_ Yes X No

Hearing date(s)\* \_\_\_\_\_

Executive action (vote) date(s)\* \_\_\_\_\_

\* Includes minutes, exhibits, roll call, visitors register, and vote sheet if available.

Did this bill originate in an interim committee? \_\_\_\_\_ Yes X No

Committee \_\_\_\_\_ Report \_\_\_\_\_

NOTES: Requesting an interim study to identify and provide for preservation of the rights of landowners adjacent to public land and waterways and to identify and provide for rights of the public to access and use public land and waterways



Compiled by: rg

Date: 4-27-2017 001

INTRODUCED: 03/09/83

REFERRED TO COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION: 03/09/83

HEARING: 3/21/83

REPORT: 03/21/83, DO PASS, AS AMENDED

2ND READING: 03/30/83, DO NOT PASS AYES: 60; NAYS: 29

BILL KILLED

HJR 35 -- G. JACOBSON, HOLLIDAY, SPAETH, ET AL. -- REQUESTING AN INTERIM STUDY OF THE CLASSIFICATION, EVALUATION, AND ASSESSMENT OF AGRICULTURAL LAND FOR TAX PURPOSES, THE LAWS AND EXISTING AND PROPOSED ADMINISTRATIVE RULES RELATING THERETO, AND THE EXISTING AND PROPOSED TAX COMPUTATION METHODS; REQUIRING A WRITTEN REPORT OF THE STUDY TO THE 49TH LEGISLATURE.

INTRODUCED: 03/17/83

REFERRED TO COMMITTEE ON AGRICULTURE: 3/17/83

HEARING: 3/21/83

REPORT: 03/21/83, DO PASS

2ND READING: 03/29/83, DO PASS, AS AMENDED AYES: 86; NAYS: 1

3RD READING: 03/30/83, DO PASS AYES: 92; NAYS: 1

TRANSMITTED TO SENATE: 3/30/83

REFERRED TO COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION: 04/05/83

HEARING: 4/9/83

REPORT: 04/08/83, BE CONCURRED IN

2ND READING: 04/11/83 AYES: 49; NAYS: 1

3RD READING: 04/12/83 AYES: 42; NAYS: 6

RETURNED TO HOUSE 4/12/83

ADOPTED: 4/15/83

HJR 36 -- KEYSER, LEE, QUILICI, ET AL. -- REQUESTING AN INTERIM STUDY TO IDENTIFY AND PROVIDE FOR PRESERVATION OF THE RIGHTS OF LANDOWNERS ADJACENT TO PUBLIC LAND AND WATERWAYS AND TO IDENTIFY AND PROVIDE FOR RIGHTS OF THE PUBLIC TO ACCESS AND USE PUBLIC LAND AND WATERWAYS; REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE LEGISLATURE.

INTRODUCED: 03/19/83

REFERRED TO COMMITTEE ON NATURAL RESOURCES: 03/19/83

HEARING: 3/23/83

REPORT: 03/23/83, DO PASS, AS AMENDED

2ND READING: 03/30/83, DO PASS AYES: 86; NAYS: 1

3RD READING: 03/31/83, DO PASS AYES: 93; NAYS: 0

TRANSMITTED TO SENATE: 3/31/83

REFERRED TO COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION: 4/5/83

HEARING: 4/9/83

REPORT: 04/08/83, BE CONCURRED IN

2ND READING: 04/11/83 AYES: 50; NAYS: 0

3RD READING: 04/12/83 AYES: 44; NAYS: 4

RETURNED TO HOUSE 4/12/83

ADOPTED: 4/15/83

HJR 37 -- DIRSCOLL, DOZIER, FAGG, ET AL. -- REQUESTING THAT AN INTERIM COMMITTEE BE ASSIGNED TO STUDY THE FEASIBILITY OF OFFERING THE COMPLETE COURSEWORK FOR A BACCALOUREATE DEGREE IN NURSING AT THE EXTENDED CAMPUSES OF THE MONTANA STATE UNIVERSITY'S SCHOOL OF NURSING AND TO STUDY THE NEED FOR MORE CLINICAL TRAINING WITHIN THE NURSING DEGREE PROGRAM.

1 House JOINT RESOLUTION NO. 36  
2 INTRODUCED BY Lesley C. Linton House  
3 D. H. Agnew Tom Bran Ramsey Dean  
4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF  
5 REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN  
6 INTERIM STUDY TO IDENTIFY AND PROVIDE FOR PRESERVATION OF  
7 THE RIGHTS OF LANDOWNERS ADJACENT TO PUBLIC LAND AND  
8 WATERWAYS AND TO IDENTIFY AND PROVIDE FOR RIGHTS OF THE  
9 PUBLIC TO ACCESS AND USE PUBLIC LAND AND WATERWAYS;  
10 REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE  
11 LEGISLATURE.

13 WHEREAS, the right of the public to use waterways for  
14 recreational and other purposes and the related issue of  
15 navigability are unsettled in law; and

16 WHEREAS, ownership rights in land underlying waterways  
17 and rights of adjacent landowners to place obstacles in  
18 waterways or to restrict use of streambanks are also  
19 unsettled; and

20 WHEREAS, the right of the public to use public land is  
21 being inhibited by restrictions of access across private  
22 adjoining land; and

23 WHEREAS, there is an increasing number of disputes  
24 between private landowners and public users concerning the  
25 use of public land and waterways; and

1            WHEREAS, both the adjacent private landowners and the  
2        public have substantial interests involved in the resolution  
3        of these conflicts.

5 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE  
6 OF REPRESENTATIVES OF THE STATE OF MONTANA:

7 That an appropriate interim committee be assigned to  
8 study ways to identify and preserve rights of landowners  
9 adjacent to public land and waterways and to identify and  
10 provide for rights of the public to access and use public  
11 land and waterways. The study shall:

12 (1) identify possible methods of acquiring and  
13 maintaining access across private land to public land and  
14 waterways;

15 (2) clarify the right of the public to use waterways,  
16 including:

17 (a) Identification of waterways that may be used by  
18 the public;

19 (b) further legislative definition of navigability, if  
20 necessary;

21 (c) clarification of when a prescriptive use or  
22 easement may exist; and

23 (u) use of adjacent uplands in conjunction with the  
24 right to use the waterway;

25 (3) identify use rights and title interests of

1 adjacent landowners in land under and adjacent to waterways,  
2 including:  
3 (a) the right to place fences, bridges, flumes, or  
4 other obstacles in the waterway;  
5 (b) consequent taxation liabilities; and  
6 (c) mineral rights;  
7 (4) establish the liabilities of landowners for  
8 impeding the right of the public to use public land or  
9 waterways and the liabilities of public users with respect  
10 to violations of rights of adjacent landowners; and  
11 (5) determine appropriate methods of enforcement.  
12 BE IT FURTHER RESOLVED, that the committee report its  
13 findings and recommendations to the 49th Legislature.

-End-

## STATUS SHEET

HOUSE NATURAL RESOURCES  
COMMITTEE

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## 48 Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 927	Amends the water development program laws to apply provisions relating to loan and grant applications, eligibility, and evaluation, etc.	4/12	Bardanouve	4/15	AND AS AMENDED DO PASS STATEMENT OF INTENT	4/15
HJR 2	Study impacts of the proposed Tenneco Coal gasification plant at Wibaux and methods for cooperating with North Dakota to mitigate impacts	1/6	Winslow	1/21	AND AS AMENDED DO PASS	1/26
HJR 12	State of Montana opposes the federal administration's plan to sell public land	1/25	Swift	2/4	AND AS AMENDED DO PASS	2/9
HJR 20	To review the rules adopted under the Montana Subdivision and Platting Act; requiring the Department to amend or repeal those rules not consistent, etc.	2/5	Marks	2/11	AND AS AMENDED DO PASS	2/18
HJR 36	Requests an interim study to identify and provide for rights to landowners adjacent to public lands and waterways; and rights of the public	3/21	Keyser	3/23	AND AS AMENDED DO PASS	3/23
HJR 40	Interim study of the management of the state lands resources, particularly state forest resources.	4/6	Stobie	4/11	AND AS AMENDED DO PASS	4/11

HOUSE NATURAL RESOURCES COMMITTEE MINUTES  
March 23, 1983

The House Natural Resources Committee convened at 12:30 p.m., on March 23, 1983, in Room 224K of the State Capitol, with Chairman Harper presiding and all members present except Reps. Brown, Metcalf and Nordtvedt, who were excused. Chairman Harper opened the meeting to a hearing on House Joint Resolution 36.

HOUSE JOINT RESOLUTION 36

REPRESENTATIVE KERRY KEYSER, District 81, chief sponsor, said the bill requests a study to identify and provide for preservation of the rights of landowners adjacent to public land and waterways and to identify and provide for rights of the public to access and use public land and waterways. Rep. Keyser said there had been an access study done in depth and there is a lot of material available on that but nothing concrete came from the study. He said there are two bills dealing with this area in the Senate now which is why this bill is late in being introduced. He said there are strong feelings on this issue on both sides and that is why it is important to look at the issue and see what can be done.

KEN KNUDSON, Montana Wildlife Federation, said they support the resolution. He said they have been involved all along with the navigability controversy. He said they have met with some of the groups on this issue and he felt a dialogue was being started. He said he would like to be informed so he could participate in the study. He said they have learned a lot and could contribute to an interim study.

WILL BROOKE, Montana Wool Growers, said they support the concept of the study. He said this is a volatile issue and a storm is growing in the countryside. He said they would like to be informed so they could be active participants in a study.

BILL ASHER, APA, SCPA, PCLA, said they support this study. He said they opposed HB 888 hoping there would be a study. He said the study if possible should include people from many segments besides the legislature.

LORENTZ GROSFIELD, Big Timber, representing self, spoke in support. A copy of his testimony is Exhibit 1a. Exhibit 1b is a copy of a suggested joint resolution requesting an interim examination of the navigability issue in Montana. Exhibit 1c is titled "Navigable Streams - What's In Them for Montana?" Exhibit 1d is further information on the issue which Mr. Grosfield left for the record.

There were no opponents.

REPRESENTATIVE KEYSER in closing said he knew this would take a lot of cooperation.

Questions were asked by the committee.

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Rep. Ream asked how a handle was going to be had on this. Mr Grosfield said the study would look into ways to handle conflicts before they arise.

Rep. Keyser said he lives on the Madison and knows part of the problems. He said there are floaters and bank fishermen that use the area. He said there is some animosity at times. He said the upper area is strictly open to fly fishermen and floaters can't go through that.

Rep. Ream said information is needed on the amount and kind of conflicts. He said he doesn't see that in the bill.

Rep. Keyser said there is a need to clarify the right of the public using the waterway and to identify the waterways that can be used by the public. He said he didn't try to make this a very broad based approach. He said with the language in the bill, it will meet the concerns of any member of the committee. He said it is broad enough to cover the spectrum.

Chairman Harper closed the hearing on this bill and opened the meeting to a hearing on HB 914.

HOUSE BILL 914

REPRESENTATIVE TOM ASAY, District 51, said this legislation concerns the assessment of the potential for a joint water development project between Montana and Wyoming on the Clark Fork of the Yellowstone River. A copy of a fact sheet he used in his testimony is Exhibit 2 of the minutes.

GARY FRITZ, Department of Natural Resources and Conservation, said they support the logic and there is a need to work with Wyoming to determine what our rights are in the Clark Fork.

KEN KNUDSON, Montana Wildlife Federation, said they support the bill. He said this should include a representative of the Fish, Wildlife and Parks Department to take care of instream flows.

There were no opponents.

REPRESENTATIVE ASAY closed. He said this is a beautiful valley and that the stream is almost totally accessible.

Questions were asked by the committee.

Rep. Bertelsen said the date on page 2, line 15 is possibly a misprint. He said he also has a problem with two person committees and he would be more comfortable with a different number. Rep. Asay said he had no problem with that.

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Rep. Curtiss said she opposes the bill as it adds more burdens on another agency. She said it is too bad we had to listen to the bill twice.

Chairman Harper said he apologizes for that as, he said, he took that on himself.

Rep. Quilici said he personally didn't think the bill was that important because he felt anything the bill provides for could be done now.

A roll call vote was taken and the motion carried with 11 voting yes; 5 no (Asay, Curtiss, Hand, Mueller, Quilici); and three absent (Brown, Metcalf, Nordtvedt).

HOUSE BILL 893 Rep. Neuman went through the amendments which are Exhibit 3 of these minutes. Rep. Ream moved that amendments 2, 3, 6, and 7 pass.

Chairman Harper said there was another set of suggested amendments from the Department of Natural Resources and Conservation.

Leo Berry, Director of DNRC, said the amendments put HB's 908 and 893 together. He said he would be glad to explain them. A copy of these is Exhibit 4.

Rep. Mueller said this is a very complex issue and we need to spend enough time on it.

Rep. Ream withdrew his motion for now.

Chairman Harper encouraged the members to take the suggested amendments with them and examine them as time permitted.

HOUSE JOINT RESOLUTION 36 Rep. Iverson moved the bill DO PASS. Rep. Fagg said he would favor a proposal to put public members on the committee. He said we should get both sides to sit down together along with legislators. He said there might be a member that represented landowners, one that represented the stockman's association and one from an environmental association.

Rep. Harper asked if he had in mind specific groups or generic cataloguing. Rep. Fagg said just as well groups.

Rep. McBride said there might be some problem with having people other than legislators named on the committee.

Ms. Debbie Schmidt, EQC, was asked for an opinion and said there is a problem with compensating others unless they are an advisory council.

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Rep. Iverson said he was a little unsure about doing this and said he would rather trust in the hearing process. He said this thing is hot and volatile and we could blow it all up by leaving out some group. He said it should be left to a legislative group, as unbiased as possible.

Rep. Fagg said he had been involved in the Wild River legislation and knew that the hearing process doesn't always work too well. He felt it would be better if they were directly involved.

Rep. Jensen suggested that the EQC might fit the categories and would be the best place to put the study.

Rep. Iverson said they don't have anyone that is embroiled in this but they do have public members and so might be a good place for it.

Rep. Fagg moved to amend and have the committee include two recreationists and two landowners. This motion failed with Reps. Fagg, Jensen, Veleber and Ream voting yes and absent were Reps. Brown, Metcalf and Nordtvedt.

Rep. Hand moved to amend on page 2, line 11, following "study" to insert "committee"; and following "shall" to insert "cooperate with all interested persons to the fullest extent possible to". This motion carried unanimously with all present (same absent).

Rep. Iverson changed his motion to AND AS AMENDED DO PASS. This motion carried unanimously with all present (absent were Reps. Brown, Metcalf and Nordtvedt).

HOUSE BILL 914 Rep. Asay moved to amend on page 2, line 21, to strike "two" and insert "four" and strike "from South Central Montana". This amendment carried with those present. Absent now were Reps. Brown, Metcalf, Nordtvedt and Fagg.

Rep. Asay moved that HB 914 AS AMENDED DO PASS. He said this study would lay the ground work for an indepth study. He said it is to determine if there is some meeting ground. He said the study should cover about anything.

Rep. Ream suggested the funds be taken from the 30 percent that goes to water projects. Rep. Iverson said it was too late for that. Chairman Harper asked if there was any way to say it is coming from the DNRC budget.

The question was called and the motion carried unanimously with those present (same absent as previous vote).

Meeting adjourned at 2:05 p.m.

Respectfully submitted

009



Mr. Chairman, Members of the House Natural Resources Committee:

I am Lorents Grosfield, Melville Route, Big Timber, MT 59011.

I am a cattle rancher.

In my study of the navigability issue in Montana, I have written a possible resolution to address the issue. However, many of my concerns have been well-expressed in HJR 36 and therefore I submit to the Committee my resolution, not as a substitute, but as a further explanation of my concerns, including some additional areas that I feel should be studied.

I would hope that this committee take these suggestions under advisement to the end of adequately and decisively addressing the issue. My suggestions on the formation of the interim commission echo the concerns of the other proponents, namely we need a good study with interested parties involved.

Respectfully submitted,

Lorents Grosfield

JOINT RESOLUTION

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM EXAMINATION OF THE NAVIGABILITY ISSUE IN MONTANA.

WHEREAS, "navigable waters" are nowhere clearly defined in Montana law; and WHEREAS, the ownership of lands under navigable waters is also nowhere clearly defined in Montana law; and

WHEREAS, recent Montana court cases have been able to call into question the status of streams and the ownership of streambeds throughout Montana; and

WHEREAS, although the increasingly popular use of certain waters of Montana for recreational floating and other recreational purposes is a relatively new phenomenon not generally contemplated in Montana water law, nevertheless several legislative bills introduced into the 48<sup>th</sup> Legislature have tended to equate the historical essence of "navigable" with recreationally "floatable", without distinguishing between the two; and

WHEREAS, the uncontrolled growth of all manner of recreational use of Montana waters will result in conflicts amongst recreationists as well as between recreationists and landowners; and

WHEREAS, future water appropriations that might be detrimental to established instream recreation may be subject to legal challenge; and

WHEREAS, the navigability and floatability issue is potentially a very divisive issue for the people of our State; and

WHEREAS, the Legislature desires to avoid this divisiveness as well as to provide for a Legislature-approved method to make the designations of recreationally accessible streams responsible, fair, and well-defined;

WHEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

- (1) That an appropriate interim commission be appointed to examine the legal, equity, and administrative issues relating to the navigability/floatability issue.
- (2) That the Majority and Minority Leaders of the Senate and of the House of Representatives each appoint one legislator, one agricultural landowner (whose primary living comes from agriculture), and one recreationist (whose primary living does not come from agriculture), for a total of 12 equally bi-partisan persons to serve on the commission.
- (3) That the Directors of the Departments of Fish, Wildlife and Parks, State Lands, and Natural Resources and Conservation serve in an advisory and technical capacity to the commission as needed within their staffing and budgeting limitations.
- (4) That the interim study herein authorized include but not be limited to an examination of:
  - (a) the definition of "navigable" in relation to the definition of "floatable" (as well as of "non-navigable" and "non-floatable"), and under what authority and conditions should the differences be determined;
  - (b) the ownership of the beds of navigable streams and the location of the boundaries thereof;
  - (c) the ownership of the beds of floatable streams and the location of the boundaries thereof;
  - (d) the relationship of, role of, and necessity for due process and just compensation for recreational uses of streams on private lands;
  - (e) a landowner's rights and liabilities regarding streambeds on his land;
  - (f) a recreationist's rights and liabilities regarding or resulting from recreational uses of navigable and floatable waters of Montana;
  - (g) the extent to which administrative control should be exercised over recreational uses of Montana waters and the proper roles of governmental entities such as, but not limited to the Department of Fish, Wildlife and Parks, regarding recreational uses of Montana waters;
  - (h) the effect and necessity for control of recreational uses on future diversionary demands for water from a navigable or floatable stream; and
  - (i) sections of Montana law concerned with navigation and recreational uses of water including, but not limited to: 70-1-202, 70-16-201, 70-16-301, 70-19-405, 77-1-112, 85-1-112, 87-2-305, and 87-1-Part 3, MCA, the Articles of Statehood, the Montana Constitution, and the federal navigability definitions.

(5) That the interim commission prepare and submit to the 49<sup>th</sup> Legislature a comprehensive report of its findings together with its recommendations for legislation necessary to implement these findings including decisively defining "navigable" and "floatable" and how the designation of each is to be made and administered in a fair, reasonable, and readily definable manner.

## NAVIGABLE STREAMS— WHAT'S IN THEM FOR MONTANA?

In 1944 the U.S. Congress passed the Flood Control Act which provided money for the future development of large water projects in the Missouri River Basin. At that time, several foresighted Senators were concerned that the semi-arid western states might be precluded from developing mainstem and tributary projects for agriculture and industry because of the demands below Sioux City in the Missouri River, and subsequently on the Mississippi, for maintaining a high enough flow in the river to perpetuate navigation. Today, navigation is indeed an important use of the river below Sioux City, especially for barge shipment of grain. Yet a recent \$85,000 study, authorized and funded by the 1981 Montana legislature, shows that agricultural water development in the mainstem and tributaries in upstream states including Montana, probably cannot proceed very much further without detrimental effects on the navigation below Sioux City. This study further shows that the total navigation industry in the lower river ceased to grow at upstream development, the net economic loss to the lower river states due to the loss of benefits from agricultural water development in Montana alone, not to mention the other upstream states on industrial water development. Those foresighted Senators attached an amendment to the Flood Control Act of 1944 which said, "The use for navigation ... of waters ... shall be only such use as does not conflict with any beneficial consumptive use, present or future, ... of such waters for domestic, municipal, stock water, irrigation, mining, or industrial purposes." (Emphasis added.) Although this amendment has primarily to do with protecting upstream states' rights to develop in light of large downstream water developments for flood control and aid to navigation, it should be obvious that if so-called "recreational navigation" is allowed a free hand to develop in Montana, at some future time there will be conflicts between the navigational use of water, and uses for agriculture and industry. In retrospect, the words of a primary sponsor of this amendment (Senator O'Mahoney) seem not only applicable but even ominous to thoughtful Montanans considering the navigability issue today. "In the meantime they have built their barges, they have built their docks, they have established their trade routes. They built their wharves, they have built mills, and the access to the land will then be a vested interest. There will be a vested interest recognized by Congress. Now there are no laws yet to guard against." As this Montana legislator, Senator Milliken, argued in his speech earlier, he made sure by his amendment that navigation and its related works of vested interests, that they would not preclude the future depletion of the water for future consumptive uses." Again, the Senator, "There never was any intention and could not possibly be any intention, upon the part of Congress, to compel the residents in the dry land states ... to sit at their doorsteps and watch the water flow unused by their farms and ranches."

Three things should emerge quite clear from this little bit of history. First, if we legislate to open all navigable streams in the state to all manner of recreational floating craft, we are among other things vesting an interest in the use of these waters for recreation. At some future date, if a rancher or farmer wants to develop a new irrigated field that would result in lowering the water level in a stream to the detriment of recreational floating, there would be a strong legal argument for an organization such as the Coalition for Streamkeepers or the Montana Department of Fish, Wildlife, and Parks to object and even file suit seeking injunction against the water use because of the public injury that would result from depleting a navigable stream that has been successfully floated for a number of years. In the "Use It or Lose It Study," the number one strategy listed for defending Montana's water resources from outside interests and thereby to protect future Montana water needs and development, is that "The state should rely upon the 1944 Flood Control Act and the O'Mahoney-Milliken Amendment as its first line of protection." It would seem that the State of Montana would be hard-pressed to argue that

future Montana water development rights should be superior to downstream navigation needs because of this amendment, while arguing (through the Fish, Wildlife, and Parks) the opposite inside the state. It would seem to me that any Montana recreational navigation legislation should contain this same forward looking amendment, to protect the future of our agricultural base.

The second thing that should emerge is that navigation has traditionally been thought of in terms of rivers. The Army Corps of Engineers today considers three rivers in Montana as Phase 1 and navigable: the Kootenai, the Missouri, and the Yellowstone. As most farmers and ranchers will know, generally a permit from the Corps (and several other agencies) is necessary before work can begin for any structure on or work in, under, or over these rivers; most will also know that the Corps or its agents frequently fly over these rivers looking for violations. And now, many people are seeking to have all floatable streams in Montana declared navigable. While the upshot may not be the actual involvement of the Army Corps, one can well imagine the increased bureaucratic encroachment on any activities on or near any stream declared navigable by state law.

The third thing that emerges is that traditionally, when we spoke of "navigation", we were talking about commerce. We were talking about moving the products of the land. We were talking about physically maintaining adequate channels, and about two way traffic, down and up. My dictionary defines "navigable" as "wide or deep enough, or free enough from obstructions, to be travelled on by ships: as, a navigable river." It doesn't say rubber rafts, it says ships.

At present, the word "navigable" appears in Montana law in several places, that is, to designate a stream navigable has many specific legal connotations, besides any judicial interpretations. For example: 1. A fisherman may angle within the high water marks; 2. The state owns the land under it and all islands in it; 3. The state owns all lands which "at any time in the past comprised such an island or any part thereof"; 4. State lands bordering on navigable streams cannot be sold; 5. Navigable streams are to be considered as public ways (or roads); 6. "All persons shall have the same rights therein and thereto"; 7. All streams that can in fact be navigated are navigable (the law doesn't now specify: navigated by raft); 8. The Fish and Game "commission may adopt and enforce rules governing recreational uses of all ... streams which are legally accessible to the public". Except for the last, (which is even broader in scope), all these and probably several other effects concern navigable streams. Is it really correct, or desirable, or even sensible to equate floatable with navigable? Is it proper to class recreational floating with navigation? Isn't that a little like apples and oranges?

Well, like it or not, the fact is that the traditional meaning of "navigable" is dramatically changing and with it on the horizon is evolving a dramatic change in the way we view private property and a landowner's rights thereon. According to the Coalition for Stream Access and the Montana Fish, Wildlife, and Parks and the two recent Montana lower court decisions regarding recreational navigation (as well as other cases in other states), it is proper to class recreational floating with navigation, and further it's proper that the public shall have unlimited access on floatable streams for all manner of recreation. Though one might think that a stream would have to be easily navigable or at least have a history of navigation, neither is necessarily the case. In Judge Bennett's decision on the Dearborn River, he stated, "The requirement for establishing navigability (under present state law) is not, however, a showing that the navigation is easy but simply that it is possible." He feels the rule should be: "A Montana stream is navigable and accessible for recreational purposes over so much of its entire course as is navigable by recreational craft at any given time." And "Once recreational navigation is established, navigation is not limited to water craft. The angler may wade between the high water lines and the hiker may walk." And, one would assume, the hunter may hunt, the camper may camp, the motorcyclist may cycle, the four wheel drive

enthusiast may drive, the snowmobiler may snowmobile, the prospector may prospect, the trapper may trap, the squatter may squat, the cross-country skier may ski, in short, any member of the public may conduct any otherwise legal recreational purpose or ventures thereon. And certainly by expanding the traditional commerce definitions of navigability to include recreation, he does not now propose to limit navigability to recreational uses--- I believe the popular phrase nowadays is "multiple use". Any otherwise legal activity would appear to have equal standing, things such as commercial movement of products, prospector dredging, commercial trapping, commercial guiding and outfitting, etc. And the real kicker is Bennett's reference to a sentence from an old U.S. Supreme Court case from 1870 involving an interstate river: "And they (rivers) are navigable in fact when they are used or are susceptible of being used in their ordinary condition as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel." (Emphasis added.) In other words, the Bennett decision implies that if a stream is so much as capable of being recreationally floated, whether it is actually floated or not, it is then accessible to the public. Judge Shanstrom, in his decision on the Beaverhead River, essentially agrees and goes even further to conclude that "The following water depths are the minimum required for recreational floating: ... Canoe-kayak- 0.5 (feet) Driftboat, rowboat, raft- 1.0 (feet) ... if the most shallow parts ... known as riffles ... are at least of these depths, then the river is suitable for recreational floating." And "The evidence established ... that a flow ... of approximately 175 cfs would result in at least a one foot depth of water in all of the riffles of the Beaverhead River." (Presumably the 0.5 foot depth requirement is only approximately half the 175 cfs, and even less on a channel narrow reach that of the Beaverhead.) Further, he held that "A stream is not ... non-navigable simply because an occasional shallows, rapids, or falls interrupts navigation." And "Even if, however, the river were dry for a portion of the year or so low as to make floating difficult, such fact would not render the river non-navigable." And again, Judge Bennett, "Navigation ... would include travel for hunting and fishing and all those things we generally include under the general heading of recreation."

Although Judge Bennett denied a motion by the Department of Fish, Wildlife, and Parks for a declaration that the Montana Constitution should be interpreted as making all waters (navigable or not) open to public use, and although neither Shanstrom nor Bennett specifically say it, after having taken so many big steps from the traditional commerce definitions of navigation, it would seem only a small further step to sum it up and say, "Therefore all navigable streams in Montana that are now capable of being navigated as above described, are accessible to all members of the public for all lawful purposes, recreational and otherwise, at any time during the year and along any stretch of their reach." And whether these particular judges would take this small step or not, once accessibility on all these streams or portions thereof is established, it is only a natural progression to proceed to attempt to establish the least possible unlimited access to all these streams. We've seen many pushes in the past for easements or access to all other forms of public lands--- these efforts may well pale alongside a general push for unlimited access across private lands to navigable streams. (And I hesitate to pursue the logical progression further but if it ever happens that general access across private lands to navigable streams is established, that access too will probably not be limited to access for purposes of navigation or even for purposes of getting to the stream. At some point in time a judge might say, "All lands in Montana are accessible to all members of the public for all recreational and other purposes." I hope that time never arrives as it will mean that private ownership of land is no longer a possibility, and I certainly hope that no members of the Coalition for Stream Access or the Fish, Wildlife, and Parks has that goal even in the far back of their mind.)

At any rate, there are now two bills directly involving navigability that have

in one house of our legislature and have been transmitted to the other house for consideration. By far the most significant is HB 888 which will be heard by the Senate Agriculture Committee in Room 415 of the Capitol at 1:00 P.M. on March 11th. In fairness I need to say that this bill is an attempt to compromise, during the dizzying rush before transmittal, at least five navigability bills. However, the language and amendments in this bill are such that virtually all the pronouncements of fact to have in court cases affecting stretches of the Beaverhead and Dearborn Rivers will become state law for all recreationally navigable streams in Montana, as of the date the Governor signs this bill. Furthermore, the state will, without compensation or consideration, without notice, without so much as confronting you or landowner in court with condemnation proceedings, without leaving you any meaningful ability for protest, be in a position to acquire title to all lands underlying recreationally navigable streams including all islands at least up to the low water mark and probably up to the high water mark (wherever that continually changing line is). Title transfer will be automatic in many cases and at least possible if not automatic, in all cases. And you'll still pay the taxes due from these lands because either the state will decline to go to the expense of meandering all streams (that is, surveying the property lines on both sides) and therefore these lands will still appear on your tax bill, or else, if the state should so delineate its borders (through the use of your tax dollars, I might add, at the going rate of approximately \$1,000-2,000 per meandered mile times two for both sides of the stream), and "relieve" you of the taxes thereon, those taxes need to come from somewhere and the tax rates on your lands bordering the stream will merely increase to the point necessary to compensate for the lost revenue. (At least in the latter case, you would have a specifically defined boundary for tax purposes, for insurance purposes, for all sorts of purposes, in a word, for purposes of clear title to land.) Even further, if you can stand it, HB 888 says that any landowner receiving compensation for any recreational purpose on any of his land bordering a navigable stream (how far away from a stream must one be before he's no longer on land "bordering" it?) is liable for any injury to person or property that occurs while such person is using the stream. There are several other problems with the language in this part of the bill not the least of which is the amendment that adds that a landowner has no protection from liability if he "creates an obstruction to the navigation of the stream for the harassment of persons navigating the stream." This could well have the effect of subjecting a landowner to litigation concerning whether the diversionary structure for his headgate needs to be quite as big as it is or extend quite as far into the channel as it does or whether there is an underlying element or intent of harassment; that is, irrigators will be placed in the position of being subject to having the state tell them how to build their headgates and diversionary structures so as to involve the least impact on recreational floating (this would probably occur through a more aggressive involvement by the Fish, Wildlife, and Parks in the 310 permit process, which most farmers and ranchers should be familiar with).

I do not mean to imply that all these are the intent of HB 888. I firmly believe that most of those people directly involved with this bill did not intend these results. Nor do I believe, as Judge Bennett would have it, that "when the early legislature used the word 'navigation' they meant something other than commercial transport ... this would include travel for hunting and fishing and all those things we now include under the general heading of recreation." I have an idea that the members of that "early legislature" in 1933, during the depression years, had more pressing matters on their minds than recreational floating. The point is, in the final analysis, intentions don't seem to matter. What matters is the ways that language can be interpreted, and I believe that if HB 888 is passed as currently amended, it can and will be interpreted as I've suggested. The only way I can think of that would make this bill as amended a lot worse for landowners and a lot better for recreationists, is if it were amended to guarantee recreationists

unlimited public access over private land to get to the so-called "navigable streams". As the bill stands even now, it is close to a worst possible solution from an agricultural landowner's point of view, and it is undoubtedly close to a best possible solution from a recreationist's point of view. The point is, an equitable solution lies somewhere between the extremes and not at either extreme.

By far, the most harmful part of this bill does not even appear in the bill itself. It is the fact that this bill is being supported by several members of the loosely knit "ag coalition", namely, the Montana Stockgrowers Association, the Montana Farm Bureau Federation, and WIFE. Are they so naive as to believe that this bill will solve the problem or improve landowner-sportsmen relations, or that the Coalition for Stream Access, the Montana Fish, Wildlife, and Parks, and sportsmen and recreationists are going to limit their access to those few large streams that have been commercially floated over the past few years? One of the leaders of the Coalition for Stream Access testified in court, under oath, in the Dearborn case that one of the reasons for forming the Coalition in the first place was to address the "problem in gaining and maintaining access on some of Montana's rivers and streams ... (including) smaller streams rather than what are commonly known as rivers ... (including) some blue ribbon spring creeks." HB 888 states "all waters ... capable of being navigated by a craft ... are 'navigable in fact' .... 'craft' means canoe, kayak, inflatable boat, (etc.)." Once this law is passed the most it will take to prove a stream "navigable" under the law, will be a professional kayaker, accompanied by a photographer. The most it will take for title of that streambed to pass to the state will be one courtcase against one rancher who's seeking for whatever reason to block access for any form of recreation. I might add at this point that even the Department of Fish, Wildlife, and Parks as recently as 1977, purchased lands adjacent to the lands of the defendant in the Beaverhead river case, including the streambed. In 1979, the Department purchased riverbottom land downstream from the defendant's property on the same river for in excess of \$2,000 per acre. And as recently as 1981, the Department was involved in negotiations with the defendant himself for the purchase of his streambed under the River. If they believed then that the land underlying navigable streams belonged to the state, as they now contend, why did they offer to purchase it? It would appear that they have realized that that route is too limited and expensive (especially in this time of legislative fiscal conservatism), and that they can better and cheaper achieve a general access through court action, and now, through legislation.

The second bill affecting the recreational navigation issue is SB 347, which will be heard by the House Judiciary Committee in Room 224A of the Capitol on March 8th at 8 A.M. This bill is simple and straightforward. It states that a recreational easement by adverse possession cannot be obtained. As the law now stands, adverse use of land for five years by a few recreationists can be cause for acquiring a court ordered public easement on or across your land for whatever otherwise legal purposes the adverse use entails. This bill seeks to protect not only the watercourses across your land but the rest of your land as well. I can see no reason why a landowner should not actively support this bill. There's no need for recreationists not to negotiate with landowners for access either through seeking permission or through a leased or permanent easement through contract, as any other person or legal entity would expect to do. Recreational interests would do well to support this bill also--- they would have little to lose by supporting it, and it would be an excellent show of good faith in their continued efforts to improve sportsmen-landowner relations.

In conclusion, especially because of the potentially explosive emotional nature of this issue, from both sides, and because of the many inherent complexities, it is not to be disposed of lightly or merely cosmetically. It needs in-depth, careful, conscientious study and a negotiated legislative settlement through a co-ordinated effort by open-minded landowners and open-minded recreationists, if there are any (of either) left. Maybe a general legislation covering all streams of a

given certain size or quality during all seasons and on all stretches could be equitable and practical. Or maybe different seasons and different streams and segments thereof need to be addressed and listed individually to better solve the issue in a workable, practical, and equitable manner. This needs to be discussed by both sides. Perhaps the legislature might direct for example the majority and minority leaders of either or both houses of the legislature to joint an interim study commission, with each leader appointing, say, two agricultural landowners, two recreationists, and a lawyer, with the purpose of presenting the 1985 legislature with a workable compromised proposal.

In summary, the navigability issue is perhaps the biggest confrontation to Montana landowners in modern times because the effects are far-reaching, unfamiliar, non-traditional, and numerous. Of all the many issues involved, there are four that stand out:

The number one issue in the controversy really has nothing to do with navigation or recreation--- it is a question of land ownership: Who owns that land?

The number two issue has more to do with water than with recreation: Will future water development potential in Montana for agriculture and industry be protected?

Number three involves a definition: Given the many effects, is it sensible to equate recreational floating with navigation, or should we be using another word backed up by another distinctive body of law?

And the number four issue involves recreational access: Of the total stream mileage in Montana under what conditions should what stretches be available to the public for recreation and other uses?

It remains that we agriculturalists and recreationists live in this state together. Many facets of the issues herein discussed are paramount in the reasons that each of us chooses to remain in Montana. We do have a democratic form of government. We do therefore have the opportunity to work out our differences, and to discover our likenesses.

---Lorenzo Grassfield

The question remains, I suppose, how is a reasonable agricultural landowner to put all this together in his mind in such a way that he can determine a meaningful, prudent, and fair position on the issue? It is not easy because so many of the elements are so potentially emotional. My personal feelings are, and this doesn't mean that I'm done thinking or learning about it, or that my mind is closed on the subject:

1. Except in the obvious cases meandered by the federal government, where a landowner has not paid taxes on a streambed, the streambed or watercourse is and should rightfully be the property of the adjacent landowner--- this is how it has been and assumed to have been historically, both in title and in fact. This is the only practical way to view the situation and avoid such insurmountable problems as surveying a continually changing high water property boundary on each side of all streams for tax purposes, for insurance purposes, for mineral purposes, in a word, for purposes of clear title to land.

2. The water itself belongs to the state and the state thereby has some rights to control and plan for the development and use of that water. These rights belong to the state and should never be given up to the federal government. These states' rights include rights to control various activities on many watercourses such as fishing, the building of water development structures, the operation of return flow water treatment plants, and diversionary and non-diversionary uses of water, including for irrigation and recreation.

3. The public right to use meandered public waters and lands for any legal purposes within the meander lines is not at issue.

4. Future agricultural and industrial water development in semi-arid Montana needs express legislatively guaranteed protection from present or future pre-emption for irrigation or recreation. It is a simple matter of economic priority.

5. There are many streams or segments thereof, unmeandered, that need legislative recognition of vested public recreational rights including recreational navigation (which I prefer to call recreational floating). Equally needed in these cases is landowner protection from liability, harrassment, or expense relative to or arising out of these recreational rights. There is not going to be an answer that is satisfactory to all the participants involved in the issue.

6. Especially because of the potentially explosive emotional nature of this issue, from both sides, and because of the many inherent complexities, it is not to be disposed of lightly or merely cosmetically. It needs in-depth, careful, conscientious study and a negotiated legislative settlement through a co-ordinated effort by open-minded landowners and open-minded recreationists, if there are any (or either!) left.

7. Finally, it's helpful to remember that a large part of the reason that we citizens of Montana remain in Montana has to do with a quality of life that we find here. There are ample opportunities for outdoor recreation, for "productive and enjoyable harmony between man and his environment", for solitude, for communication with nature on your terms, and for sharing "the good life" with those you care for. In this context, as a recreationist, there is ample occasion for refuge from the demands of society as well as restful and meaningful alternatives for enjoying life to the fullest. From the recreationist's point of view, Montana offers a quality of life that is increasingly threatened and encroached upon by a growing population seeking more recreational opportunities, by a bureaucracy and conservative traditionalism that frustrate recreational accessibility, and by continuing development of natural resources. Oddly, the conservative traditionalism is instrumental in keeping Montana unique from the fast-paced, impersonal

urbanized states, and further, the development of our natural resources is due largely to the natural inclination of modern man to progress, to improve his state of being, to develop the physical means that will make life easier and more pleasant for ourselves and our heirs, thus allowing, among other things, more time for leisure and for recreation, that is, to enjoy the quality of life that keeps the agriculturalist in Montana in the first place. It's a sort of "Catch 22".

In this same context of opportunity, as an agricultural landowner, there is ample occasion to witness the fruit of your labor and the response of the land to your decisions. From the agriculturalists point of view, it is a quality of life that is increasingly threatened and encroached upon by a growing population seeking more recreational opportunities, by more demands for social services that inevitably results in increased disproportionate taxes, and by an ever increasing bureaucracy. Oddly, the success of this bureaucratic encroachment results largely from the major ingredient in the quality of the agriculturalist's life--- individuality; your decisions are your decisions. And to subjugate your individuality to a bureaucracy is distasteful; to subjugate it even to a stable united agricultural front in the form of, for example, a lobbying effort or resistance to the bureaucracy, though often desirable is nevertheless too seldom successful, on any except patently radical issues, for the same reason--- to subjugate your individuality to the will of a group is to lose a part of that "rugged individualist" quality of life that keeps you in Montana in the first place. It's a sort of "Catch 22".

It remains that we live in this state together. We have a democratic form of government. We do therefore have the opportunity to work out our differences, and to discover our likenesses.

Finally, the navigability issue is perhaps the biggest confrontation to Montana landowners in modern times because the effects are far-reaching, unfamiliar, non-traditional, and numerous. Of all the many issues involved, there are four that stand out:

The number one issue in the controversy really has nothing to do with navigation or recreation--- it is a question of land ownership: Who owns that land?

The number two issue has more to do with water than with recreation: Will future water development potential in Montana for agriculture and industry be protected?

Number three involves a definition: Given the many effects, is it sensible to equate recreational floating with navigation, or should we be using another word backed up by another distinctive body of law?

And the number four issue involves recreational access: Of the total stream mileage in Montana, under what conditions should what stretches be available to the public for recreation and other uses.

## VISITOR'S REGISTER

## HOUSE NATURAL RESOURCES

## COMMITTEE

**BILL** **HJR 36**

DATE 3/23/83

SPONSOR REP. KEYSER

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

# STANDING COMMITTEE REPORT

March 23, 1983 \$3

MR. SPEAKER

We, your committee on NATURAL RESOURCES

having had under consideration HOUSE JOINT RESOLUTION 36 Bill No.

Chair reading copy ( white )  
color

**A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES  
OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO IDENTIFY  
AND PROVIDE FOR PRESERVATION OF THE RIGHTS OF LANDOWNERS ADJACENT  
TO PUBLIC LAND AND WATERWAYS AND TO IDENTIFY AND PROVIDE FOR  
RIGHTS OF THE PUBLIC TO ACCESS AND USE PUBLIC LAND AND WATERWAYS;  
REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE LEGISLATURE.**

Respectfully report as follows: That HOUSE JOINT RESOLUTION 36 Bill No.

be amended as follows:

1. Page 2, line 11.  
Following: "study"  
Insert: "committee"  
Following: "shall"  
Insert: "cooperate with all interested persons to the fullest  
extent possible to"

AND AS AMENDED  
DO PASS

~~XXXXXX~~  
DO PASS

HAL HARPER

Chairman.

023

**SB 289**, third reading copy, be amended as follows:

1. Title, line 8.

Strike: "AND"

Following: "VIOLATION"

Insert: ";" AND PROVIDING A DELAYED EFFECTIVE DATE"

2. Page 3, line 17.

Following: line 16

Insert: "Section 7. Effective date. Section 5 is effective July 1, 1984."

And, as amended, be concurred in. Report adopted.

**SB 395**, be concurred in. Report adopted.

Committee attached the following statement of intent:

Statement of Intent  
SB 395

A statement of intent is required for SB 395 because it authorizes the Department of Social and Rehabilitation Services and the Department of Institutions to adopt rules for the certification of professional persons. It is the intent of SB 395 to have professional persons certified by the Department of Social and Rehabilitation Services and the Department of Institutions as qualified to provide those services.

The Legislature contemplates that certification of an individual as a professional person will be determined upon qualifications specified by rule. Those qualifications should be predicated upon education, experience, and skills. The specific qualifications will be those that are appropriate for an individual to carry out the professional person's responsibilities with respect to the developmentally disabled.

The rules should provide for the appropriate higher education degrees and the nature and degree of experience and skills that professional persons must possess. The rules should allow for varying combinations of education, experience, and skills that satisfy the professional person certification requirements. Among those degrees of higher education which are to be considered appropriate are psychology, social work, special education, or similar human service degrees.

The qualification set forth in the rules should be developed by reference to such nationally recognized standards as those of the Accreditation Council for Services for Mentally Retarded and other Developmentally Disabled persons (ACMRDD), Title XIX of the Social Security Act as amended, and federal regulations implementing that Act, and similar standards.

LOCAL GOVERNMENT (McBride, Chairman):

3/23/83

**SB 21**, third reading copy, be amended as follows:

1. Page 1, line 25.

Following: "of"

Insert: "senior citizens and"

And, as amended, be concurred in. Report adopted.

**SB 295**, be concurred in. Report adopted.

NATURAL RESOURCES (Harper, Chairman):

3/23/83

**HJR 36**, introduced bill, be amended as follows:

1. Page 2, line 11.

Following: "study"

Insert: "committee"

Following: "shall"

Insert: "cooperate with all interested persons to the fullest extent possible to"

And, as amended, do pass. Report adopted.

**HB 914**, introduced bill, be amended as follows:

1. Page 2, line 21.

Strike: "two"

Insert: "four"

Strike: "from South Central Montana, one"

Insert: ", two"

2. Page 2, line 22.

Strike: "one"

Insert: "two"

And, as amended, do pass. Report adopted.

**SB 118**, third reading copy, be amended as follows:

1. Page 1, line 22.

Following: "HEARING"

Insert: "or public meeting"

2. Page 1, line 25.

Following: "TRANSFER,"

Insert: "and that further public input would be desirable."

3. Page 2.

Following: line 4

Insert: "(3) If a hearing will be conducted by a federal agency on the proposed sale or transfer of federal land within the state, the commissioner shall require the attendance of a representative of the department of state lands for the purposes fulfilling the requirements of [section 3]."

Renumber: subsequent subsection

4. Page 2, line 13.

Following: "and"

Insert: "in nearest metropolitan area (Billings, Great Falls, Missoula, Havre, Bozeman, Kalispell, Butte) if sufficient public interest is shown"

5. Statement of intent, line 11.

Following: "one"

Insert: "regional"

Following: "newspaper"

Strike: "generally"

And, as amended, be concurred in. Report adopted.

**SB 441**, third reading copy, be amended as follows:

1. Title, line 12.

Strike: ";" AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

2. Page 1, line 16.

Strike: "regularly"

3. Page 2, line 12.

Following: "of"

Mr. Speaker: We, your Committee of the Whole, having had under consideration business on second reading, recommend as follows:

Representative Nilson excused at this time.

**HB 407** - Representative Devlin moved that consideration on HB 407 be passed for the day. Motion failed as follows:

Ayes: Asay, Bliss, Compton, Curtiss, Devlin, Donaldson, Ellerd, Ellison, Ernst, Hannah, Hanson, Harp, Hemstad, Jones, Keyser, Kitselman, Marks, Miller, Mueller, Nordtvedt, Ramirez, Ryan, Sales, Sands, Schultz, Seifert, Shontz, Smith, Solberg, Stobie, Swift, Switzer, Thoft, Underdal, Vinger. Total 35

Noes: Abrams, Addy, Bachini, Bergene, Bertelsen, Brand, D. Brown, J. Brown, Connelly, Daily, Darko, Dozier, Driscoll, Eudaily, Fabrega, Fagg, Hammond, Hand, Hansen, Harper, Harrington, Hart, Holliday, Howe, Iverson, Jacobsen, J. Jensen, R. Jensen, Kadas, Keenan, Kemmis, Kennerly, Koehnke, Lory, Lybeck, McBride, McCormick, Manuel, Menahan, Metcalf, Neuman, Nisbet, O'Connell, Pavlovich, Peck, Phillips, Pistoria, Quilici, Ream, Roush, Saunders, Schye, Spaeth, Veleber, Vincent, Waldron, Wallin, Williams, Zabrocki. Total 59

Excused: Bengtson, Farris, Nilson, Yardley. Total 4

Absent or not voting: Bardanouye, Winslow. Total 2

Representative Vincent moved that HB 407 be placed below HB 219. Motion carried.

**SB 20** - That SB 20 be concurred in. Motion carried as follows:

Ayes: Abrams, Addy, Bachini, Bardanouye, Bergene, Bertelsen, Bliss, D. Brown, J. Brown, Compton, Connelly, Curtiss, Darko, Donaldson, Driscoll, Ellison, Eudaily, Fabrega, Fagg, Hammond, Hand, Hannah, Hanson, Harp, Harrington, Hart, Hemstad, Holliday, Howe, Iverson, Jacobsen, J. Jensen, R. Jensen, Jones, Kadas, Keenan, Kemmis, Kennerly, Keyser, Kitselman, Koehnke, Lory, Lybeck, McBride, McCormick, Menahan, Metcalf, Miller, Mueller, Neuman, Nisbet, Nordtvedt, O'Connell, Pavlovich, Peck, Phillips, Pistoria, Ramirez, Ream, Roush, Ryan, Sales, Saunders, Schultz, Schye, Seifert, Shontz, Smith, Solberg, Stobie, Swift, Switzer, Thoft, Underdal, Veleber, Vincent, Waldron, Wallin, Williams, Zabrocki. Total 81

Noes: Brand, Daily, Dozier, Ellerd, Hansen, Harper, Quilici, Spaeth. Total 8

Excused: Bengtson, Farris, Nilson, Yardley. Total 4

Absent or not voting: Asay, Devlin, Ernst, Marks, Manuel, Sands, Winslow. Total 7

Representative Neuman excused at this time.

**HJR 34** - Representative Roush moved that HJR 34 do pass. Representative Bardanouye made a substitute motion that HJR 34 do not pass. The substitute motion carried as follows:

Ayes: Addy, Bardanouye, Bergene, Bertelsen, Bliss, J. Brown, Compton, Connelly, Curtiss, Darko, Devlin, Donaldson, Dozier, Ellerd, Ellison, Ernst, Eudaily, Fabrega, Fagg, Hannah, Hansen, Harp, Harper, Harrington, Hart, Hemstad, Iverson, J. Jensen, R. Jensen, Jones, Kadas, Kemmis, Keyser, Kitselman, Lory, McBride, Menahan, Metcalf, Miller, Mueller, Nisbet, Nordtvedt, Phillips, Ramirez, Ream, Sales, Sands, Saunders, Schultz, Schye, Seifert, Smith, Swift, Thoft, Veleber, Vincent, Waldron, Wallin, Williams, Winslow. Total 60

Noes: Abrams, Bachini, Brand, D. Brown, Daily, Hand, Hanson, Holliday, Howe, Jacobsen, Keenan, Kennerly, Koehnke, Lybeck, McCormick, Manuel, O'Connell, Pavlovich, Peck, Pistoria, Quilici, Roush, Solberg, Spaeth, Stobie, Switzer, Underdal, Vinger, Zabrocki. Total 29

Excused: Bengtson, Farris, Neuman, Nilson, Yardley.

Total 5

Absent or not voting: Asay, Driscoll, Hammond, Marks, Ryan, Shontz.

Total 6

**HJR 36** - That HJR 36, second reading copy, be amended. Amendment failed as follows:

Ayes: Abrams, D. Brown, Compton, Curtiss, Devlin, Ellerd, Fagg, Hart, Jacobsen, J. Jensen, Jones, Kennerly, Keyser, Manuel, Miller, Nordtvedt, Pavlovich, Roush, Ryan, Sales, Seifert, Smith, Spaeth, Stobie, Swift, Switzer, Underdal, Vinger, Winslow. Total 29

Noes: Addy, Asay, Bachini, Bergene, Bertelsen, Bliss, Brand, J. Brown, Connelly, Daily, Darko, Donaldson, Dozier, Driscoll, Ellison, Ernst, Eudaily, Fabrega, Hammond, Hand, Hansen, Hanson, Harp, Harper, Harrington, Hemstad, Holliday, Howe, R. Jensen, Kadas, Keenan, Kemmis, Kitselman, Koehnke, Lory, McBride, McCormick, Marks, Metcalf, Mueller, Nisbet, O'Connell, Peck, Phillips, Pistoria, Quilici, Ramirez, Ream, Sands, Saunders, Schultz, Schye, Shontz, Solberg, Thoft, Veleber, Vincent, Waldron, Wallin, Williams, Zabrocki. Total 61

Excused: Bengtson, Farris, Neuman, Nilson, Yardley.

Total 5

Absent or not voting: Bardanouye, Hannah, Iverson, Lybeck, Menahan.

Total 5

That HJR 36 do pass. Motion carried as follows:

Ayes: Abrams, Addy, Asay, Bachini, Bergene, Bertelsen, Bliss, D. Brown, J. Brown, Compton, Connelly, Curtiss, Daily, Darko, Devlin, Donaldson, Dozier, Ellerd, Ellison, Eudaily, Fabrega, Fagg, Hand, Hannah, Hansen, Harp, Harper, Harrington, Hart, Hemstad, Howe, Iverson, Jacobsen, J. Jensen, R. Jensen, Jones, Kadas, Keenan, Kemmis, Kennerly, Keyser, Kitselman, Koehnke, Lory, Lybeck, McBride, McCormick, Marks, Menahan, Metcalf, Miller, Mueller, Nisbet, Nordtvedt, O'Connell, Pavlovich, Peck, Phillips, Pistoria, Quilici, Ramirez, Ream, Roush, Ryan, Sales, Sands, Saunders, Schultz, Schye, Seifert, Smith, Solberg, Spaeth, Stobie, Swift, Switzer, Thoft, Underdal, Veleber, Vincent, Vinger, Waldron, Wallin, Williams, Winslow, Zabrocki. Total 86

Noes: Hansen.  
Total 1

Excused: Bengtson, Farris, Neuman, Nilson, Yardley.  
Total 5

Absent or not voting: Bardanouye, Brand, Driscoll, Ernst, Hammond, Holliday, Manuel, Shontz.  
Total 8

Representative Quilici excused at this time.

Representative Neuman present at this time.

**HB 30** - That Senate amendments to HB 30 be concurred in. Motion carried as follows:

Ayes: Addy, Asay, Bachini, Bardanouye, Bergene, Bertelsen, Bliss, D. Brown, J. Brown, Compton, Connelly, Curtiss, Daily, Darko, Devlin, Donaldson, Dozier, Driscoll, Ellerd, Ellison, Ernst, Eudaily, Fabrega, Fagg, Hand, Hannah, Hansen, Hanson, Harp, Harper, Harrington, Hart, Hemstad, Howe, Iverson, Jacobsen, J. Jensen, R. Jensen, Jones, Kadas, Keenan, Kemmis, Kennerly, Keyser, Kitselman, Koehnke, Lory, Lybeck, McBride, McCormick, Manuel, Menahan, Metcalf, Miller, Mueller, Neuman, Nisbet, Nordtvedt, O'Connell, Pavlovich, Peck, Phillips, Pistoria, Ramirez, Ream, Roush, Ryan, Sales, Sands, Saunders, Schultz, Schye, Seifert, Smith, Solberg, Spaeth, Stobie, Swift, Switzer, Thoft, Underdal, Veleber, Vincent, Vinger, Waldron, Wallin, Williams, Winslow, Zabrocki.  
Total 87

Noes: None.  
Total 0

Excused: Bengtson, Farris, Nilson, Quilici, Yardley.  
Total 5

Absent or not voting: Abrams, Brand, Hammond, Holliday, Keenan, Lory, Marks, Shontz.  
Total 8

Representative Quilici present at this time.

**HB 35** - That Senate amendments to HB 35 be concurred in. Motion carried as follows:

Ayes: Abrams, Bachini, Bardanouye, Bliss, D. Brown, Compton, Connelly, Curtiss, Daily, Devlin, Donaldson, Dozier, Ellerd, Ellison, Ernst, Fabrega, Fagg, Hand, Hanson, Harp, Hemstad, Holliday, Iverson, Jacobsen, J. Jensen, R. Jensen, Jones, Kennerly, Keyser, Kitselman, Lory, McCormick, Manuel, Menahan, Miller, Mueller, Neuman, Nisbet, Nordtvedt, O'Connell, Pavlovich, Peck, Phillips, Quilici, Ramirez, Ryan, Sales, Sands, Schultz, Schye, Seifert, Smith, Solberg, Spaeth, Stobie, Swift, Switzer, Thoft, Underdal, Veleber, Vinger, Wallin, Winslow, Zabrocki.  
Total 64

Noes: Addy, Bertelsen, J. Brown, Darko, Hansen, Harper, Hart, Howe, Kadas, Keenan, Kemmis, Koehnke, Lybeck, McBride, Metcalf, Ream, Roush, Saunders, Vincent, Waldron, Williams.  
Total 21

Excused: Bengtson, Farris, Nilson, Yardley.  
Total 4

Absent or not voting: Asay, Bergene, Brand, Driscoll, Eudaily, Hammond, Hannah, Harrington, Marks, Pistoria, Shontz.  
Total 11

**HB 37** - That Senate amendments to HB 37 be concurred in. Motion carried as follows:

Ayes: Abrams, Asay, Bardanouye, Bergene, Bertelsen, Bliss, D. Brown, J. Brown, Compton, Connelly, Curtiss, Daily, Darko, Devlin, Donaldson, Dozier, Ellerd, Ellison, Ernst, Eudaily, Fagg, Hammond, Hand, Hansen, Hanson, Harp, Harper, Harrington, Hart, Hemstad, Holliday, Howe, Iverson, Jacobsen, J. Jensen, R. Jensen, Jones, Kadas, Keenan, Kemmis, Kennerly, Keyser, Kitselman, Koehnke, Lory, Lybeck, McBride, McCormick, Manuel, Menahan, Metcalf, Mueller, Nisbet, Nordtvedt, O'Connell, Phillips, Quilici, Ramirez, Ream, Roush, Ryan, Sales, Sands, Schultz, Schye, Seifert, Shontz, Solberg, Stobie, Swift, Switzer, Underdal, Veleber, Vincent, Vinger, Wallin, Williams, Winslow, Zabrocki.  
Total 79

Noes: Addy, Bachini, Peck, Saunders.  
Total 4

Excused: Bengtson, Farris, Nilson, Yardley.  
Total 4

Absent or not voting: Brand, Driscoll, Fabrega, Hannah, Marks, Miller, Neuman, Pavlovich, Pistoria, Smith, Spaeth, Thoft, Waldron.  
Total 13

Representatives Daily, Neuman, and Quilici excused at this time.

**HB 68** - That Senate amendments to HB 68 be not concurred in. Motion carried as follows:

Ayes: Abrams, Addy, Asay, Bachini, Bardanouye, Bergene, Bertelsen, Bliss, J. Brown, Compton, Connelly, Curtiss, Darko, Donaldson, Dozier, Driscoll, Ellerd, Ellison, Ernst, Eudaily, Fabrega, Fagg, Hammond, Hand, Hansen, Hanson, Harp, Harrington, Hart, Holliday, Howe, Iverson, Jacobsen, J. Jensen, R. Jensen, Jones, Kadas, Keenan, Kemmis, Kennerly, Keyser, Kitselman, Koehnke, Lory, Lybeck, McBride, McCormick, Manuel, Menahan, Metcalf, Miller, Mueller, Nordtvedt, O'Connell, Pavlovich, Peck, Phillips, Pistoria, Ramirez, Ream, Roush, Ryan, Sales, Sands, Saunders, Schultz, Schye, Shontz, Smith, Spaeth, Thoft, Veleber, Vincent, Vinger, Wallin, Williams, Zabrocki.  
Total 77

Noes: D. Brown, Devlin, Harp, Hemstad, Seifert, Solberg, Stobie, Swift, Switzer, Underdal, Waldron.  
Total 11

Excused: Bengtson, Daily, Farris, Neuman, Nilson, Quilici, Yardley.  
Total 7

Absent or not voting: Brand, Hannah, Marks, Nisbet, Winslow.  
Total 5

Representative Shontz excused at this time.

**HB 83** - That Senate amendments to HB 83 be concurred in. Motion carried as follows:

Ayes: Abrams, Addy, Asay, Bachini, Bardanouye, Bergene, Bertelsen, Bliss, D. Brown, Compton, Connelly, Curtiss, Darko, Devlin,

**HB 205** - That the Governor's amendments to HB 205 be concurred in.  
Motion carried as follows:

Ayes: Abrams, Addy, Asay, Bachini, Bardanouye, Bergene, Bertelsen, Bliss, Brand, D. Brown, J. Brown, Compton, Connelly, Curtiss, Daily, Darko, Devlin, Donaldson, Ellerd, Ellison, Ernst, Eudaily, Fabrega, Fagg, Farris, Hammond, Hand, Hannah, Hansen, Hanson, Harp, Harper, Harrington, Hart, Hemstad, Holliday, Howe, Iverson, Jacobsen, J. Jensen, R. Jensen, Jones, Kadas, Keenan, Kemmis, Kennerly, Keyser, Kitselman, Koehnke, Lory, Lybeck, McBride, McCormick, Marks, Manuel, Menahan, Metcalf, Miller, Mueller, Neuman, Nisbet, Nordtvedt, O'Connell, Pavlovich, Peck, Phillips, Pistoria, Quilici, Ramirez, Ream, Ryan, Sales, Sands, Saunders, Schultz, Schye, Seifert, Shontz, Smith, Solberg, Spaeth, Stobie, Swift, Switzer, Underdal, Veleber, Vincent, Vinger, Wallin, Williams, Yardley, Zabrocki.  
Total 91

Noes: None.  
Total 0

Excused: Driscoll, Nilson, Roush, Thoft, Waldron, Winslow.  
Total 6

Absent or not voting: Bengtson, Dozier, Quilici.  
Total 3

**HB 670** - That the Governor's amendments to HB 670 be concurred in.  
Motion carried as follows:

Ayes: Abrams, Addy, Asay, Bachini, Bardanouye, Bengtson, Bergene, Bertelsen, Bliss, Brand, D. Brown, J. Brown, Compton, Connelly, Curtiss, Daily, Darko, Devlin, Donaldson, Ellerd, Ellison, Ernst, Eudaily, Fabrega, Fagg, Farris, Hammond, Hand, Hannah, Hansen, Hanson, Harp, Harper, Harrington, Hart, Hemstad, Holliday, Howe, Iverson, Jacobsen, J. Jensen, R. Jensen, Jones, Kadas, Keenan, Kemmis, Kennerly, Keyser, Kitselman, Koehnke, Lory, Lybeck, McBride, McCormick, Marks, Manuel, Menahan, Metcalf, Miller, Mueller, Neuman, Nisbet, Nordtvedt, O'Connell, Pavlovich, Peck, Phillips, Pistoria, Quilici, Ramirez, Ream, Ryan, Sales, Sands, Saunders, Schultz, Schye, Seifert, Shontz, Smith, Solberg, Spaeth, Stobie, Swift, Switzer, Underdal, Veleber, Vincent, Vinger, Wallin, Williams, Yardley, Zabrocki.  
Total 92

Noes: None.  
Total 0

Excused: Driscoll, Nilson, Roush, Thoft, Waldron, Winslow.  
Total 6

Absent or not voting: Dozier, Kemmis.  
Total 2

Representative Vincent moved that the committee rise and report. Motion carried. Committee arose. House resumed. Mr. Speaker in the Chair. Chairman Neuman moved that the committee of the whole report be deemed read. Motion carried. Chairman Neuman moved the adoption of the committee report. Report adopted. (91-0)

### THIRD READING OF BILLS

The following bills having been read three several times, title and history agreed to, were disposed of in the following manner:

SEVENTY-THIRD LEGISLATIVE DAY 3-31-83 1883

**HJR 36** passed as follows:

Ayes: Abrams, Addy, Asay, Bachini, Bardanouye, Bengtson, Bergene, Bertelsen, Bliss, Brand, D. Brown, J. Brown, Compton, Connelly, Curtiss, Daily, Darko, Devlin, Donaldson, Dozier, Ellerd, Ellison, Ernst, Eudaily, Fabrega, Fagg, Farris, Hammond, Hand, Hannah, Hanson, Harp, Harper, Harrington, Hart, Hemstad, Holliday, Howe, Iverson, Jacobsen, J. Jensen, R. Jensen, Jones, Kadas, Keenan, Kennerly, Keyser, Kitselman, Koehnke, Lory, Lybeck, McBride, McCormick, Marks, Manuel, Menahan, Metcalf, Miller, Mueller, Neuman, Nisbet, Nordtvedt, O'Connell, Pavlovich, Peck, Phillips, Pistoria, Quilici, Ramirez, Ream, Ryan, Sales, Sands, Saunders, Schultz, Schye, Seifert, Shontz, Smith, Solberg, Spaeth, Stobie, Swift, Switzer, Underdal, Veleber, Vincent, Vinger, Wallin, Williams, Yardley, Zabrocki, Mr. Speaker.  
Total 93

Noes: None.  
Total 0

Excused: Driscoll, Nilson, Roush, Thoft, Waldron, Winslow.  
Total 6

Absent or not voting: Hansen.  
Total 1

**HB 30**, Senate amendments, concurred in as follows:

Ayes: Abrams, Addy, Asay, Bachini, Bardanouye, Bengtson, Bergene, Bertelsen, Bliss, Brand, D. Brown, J. Brown, Compton, Connelly, Curtiss, Daily, Darko, Devlin, Donaldson, Dozier, Ellerd, Ellison, Ernst, Eudaily, Fabrega, Fagg, Farris, Hammond, Hand, Hannah, Hansen, Hanson, Harp, Harper, Harrington, Hart, Hemstad, Holliday, Howe, Iverson, Jacobsen, J. Jensen, R. Jensen, Jones, Kadas, Keenan, Kennerly, Keyser, Kitselman, Koehnke, Lory, Lybeck, McBride, McCormick, Marks, Manuel, Menahan, Metcalf, Miller, Mueller, Neuman, Nisbet, Nordtvedt, O'Connell, Pavlovich, Peck, Phillips, Pistoria, Quilici, Ramirez, Ream, Ryan, Sales, Sands, Saunders, Schultz, Schye, Seifert, Shontz, Smith, Solberg, Spaeth, Stobie, Swift, Switzer, Underdal, Veleber, Vincent, Vinger, Wallin, Williams, Yardley, Zabrocki, Mr. Speaker.  
Total 94

Noes: None.  
Total 0

Excused: Driscoll, Nilson, Roush, Thoft, Waldron, Winslow.  
Total 6

Absent or not voting: None.  
Total 0

Representative Marks excused at this time.

**HB 35**, Senate amendments, concurred in as follows:

Ayes: Abrams, Asay, Bengtson, Bertelsen, Bliss, D. Brown, J. Brown, Compton, Connelly, Curtiss, Daily, Devlin, Donaldson, Dozier, Ellerd, Ellison, Ernst, Eudaily, Fabrega, Fagg, Farris, Hammond, Hand, Hannah, Hanson, Harp, Harrington, Hart, Hemstad, Holliday, Howe, Iverson, Jacobsen, R. Jensen, Jones, Keenan, Kennerly, Keyser, Kitselman, Koehnke, Lory, Lybeck, McCormick, Manuel, Menahan, Miller, Mueller, Neuman, Nisbet, Nordtvedt, O'Connell, Pavlovich, Peck, Phillips, Pistoria, Quilici, Ramirez, Ream, Ryan, Sales, Sands, Saunders, Schultz, Schye, Seifert, Shontz,

48th LEGISLATIVE SESSION

HOUSE JOINT RESOLUTIONS SENATE COMMITTEE ON AGRICULTURE

Use a separate sheet for Senate, House Bills, and Resolutions.

HOUSE JOINT RESOLUTION NO. 36

INTRODUCED BY KEYSER, LEE, QUILICI, HAND, IVERSON,  
J. HAMMOND, CURTISS, D. BROWN, RAMIREZ, DEVLIN

5 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF  
6 REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN  
7 INTERIM STUDY TO IDENTIFY AND PROVIDE FOR PRESERVATION OF  
8 THE RIGHTS OF LANDOWNERS ADJACENT TO PUBLIC LAND AND  
9 WATERWAYS AND TO IDENTIFY AND PROVIDE FOR RIGHTS OF THE  
10 PUBLIC TO ACCESS AND USE PUBLIC LAND AND WATERWAYS;  
11 REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE  
12 LEGISLATURE.

14 WHEREAS, the right of the public to use waterways for  
15 recreational and other purposes and the related issue of  
16 navigability are unsettled in law; and

17 WHEREAS, ownership rights in land underlying waterways  
18 and rights of adjacent landowners to place obstacles in  
19 waterways or to restrict use of streambanks are also  
20 unsettled; and

21 WHEREAS, the right of the public to use public land is  
22 being inhibited by restrictions of access across private  
23 adjoining land; and

24 WHEREAS, there is an increasing number of disputes  
25 between private landowners and public users concerning the

1 use of public land and waterways; and  
2 WHEREAS, both the adjacent private landowners and the  
3 public have substantial interests involved in the resolution  
4 of these conflicts.

6 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE  
7 OF REPRESENTATIVES OF THE STATE OF MONTANA:

8       That an appropriate interim committee be assigned to  
9    study ways to identify and preserve rights of landowners  
0    adjacent to public land and waterways and to identify and  
1    provide for rights of the public to access and use public  
2    land and waterways. The study COMMITTEE shall COOPERATE  
3    WITH ALL INTERESTED PERSONS TO THE FULLEST EXTENT POSSIBLE  
4    TO:

5 (1) identify possible methods of acquiring and  
6 maintaining access across private land to public land and  
7 waterways

8           (2) clarify the right of the public to use waterways,  
9 including:

0 (a) Identification of waterways that may be used by  
1 the public:

2 (b) further legislative definition of navigability, if  
3 necessary;

4 (c) clarification of when a prescriptive use or  
5 easement may exist; and

1       (d) use of adjacent uplands in conjunction with the  
2 right to use the waterway;  
3       (3) identify use rights and title interests of  
4 adjacent landowners in land under and adjacent to waterways,  
5 including:  
6       (a) the right to place fences, bridges, flumes, or  
7 other obstacles in the waterway;  
8       (b) consequent taxation liabilities; and  
9       (c) mineral rights;  
10      (4) establish the liabilities of landowners for  
11 impeding the right of the public to use public land or  
12 waterways and the liabilities of public users with respect  
13 to violations of rights of adjacent landowners; and  
14      (5) determine appropriate methods of enforcement.  
15      BE IT FURTHER RESOLVED, that the committee report its  
16 findings and recommendations to the 49th Legislature.

-End-

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1  
2

MINUTES OF THE MEETING  
AGRICULTURE, LIVESTOCK AND IRRIGATION  
MONTANA STATE SENATE

April 8, 1983

The Agriculture, Livestock and Irrigation Committee meeting was called to order on the above date, in Room 415 of the State Capitol Building, at 1:00 p.m., by Chairman Galt.

ROLL CALL: Senators Graham, Lee and Aklestad excused. All other members present.

CONSIDERATION OF HJR 35: Representative Glenn Jacobsen, HD 1, told the committee that HJR 35 is a follow up of HB 851 which placed a moratorium on the Department of Revenue for setting rules regarding implementation of agricultural reclassification. He said the resolution will get equity within the farm land itself. It will get into the value of productivity. There is a House amendment on page 3. He said the members of this study committee should be made up of people from both the Agriculture committees in the House and Senate and they should be sure some of these people sit on the study commission.

Senator Conover suggested using the same data as the SCS study for a base for this study.

CONSIDERATION OF HJR 36: Representative Kerry Keyser, HD 81, said this is a resolution to set up a study for preservation of the rights of landowners adjacent to public land and waterways. It gets to the guts of the matter. He referred the committee to page 2, lines 13 through line 14 on page 3 which outlines the specific conflicts. (Exhibit #1). They wanted to make the study as fair as possible and he realized the study would probably be a loaded one. He referred the committee to the material on the land use across hunting grounds as a reference for use on this study.

DISPOSITION OF HJR 35: Senator Conover moved HJR 35 BE CONCURRED IN. Motion carried unanimously. Senator Conover will carry it.

DISPOSITION OF HJR 36: Senator Conover moved HJR 36 BE CONCURRED IN. Motion carried unanimously. Senator Lee will carry it.

There being no further business, the meeting adjourned.

  
\_\_\_\_\_  
Jack E. Galt, Chairman

**ROLL CALL**

## AGRICULTURE COMMITTEE

48th LEGISLATIVE SESSION - - 1983

Date 4-8-83

Each day attach to minutes.

Exhibit -1  
Apr 8, 1983  
Ag.

HOUSE JOINT RESOLUTION NO. 36

INTRODUCED BY KEYSER, LEE, QUILICI, HAND, IVERSON,  
J. HAMMOND, CURTISS, D. BROWN, RAMIREZ, DEVILIN

5 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF  
6 REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN  
7 INTERIM STUDY TO IDENTIFY AND PROVIDE FOR PRESERVATION OF  
8 THE RIGHTS OF LANDOWNERS ADJACENT TO PUBLIC LAND AND  
9 WATERWAYS AND TO IDENTIFY AND PROVIDE FOR RIGHTS OF THE  
10 PUBLIC TO ACCESS AND USE PUBLIC LAND AND WATERWAYS;  
11 REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE  
12 LEGISLATURE.

14 WHEREAS, the right of the public to use waterways for  
15 recreational and other purposes and the related issue of  
16 navigability are unsettled in law; and

17           WHEREAS, ownership rights in land underlying waterways  
18 and rights of adjacent landowners to place obstacles in  
19 waterways or to restrict use of streambanks are also  
20 unsettled; and

21 WHEREAS, the right of the public to use public land is  
22 being inhibited by restrictions of access across private  
23 adjoining land; and

24 WHEREAS, there is an increasing number of disputes  
25 between private landowners and public users concerning the

1 use of public land and waterways; and  
2 WHEREAS, both the adjacent private landowners and the  
3 public have substantial interests involved in the resolution  
4 of these conflicts;

6 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE  
7 OF REPRESENTATIVES OF THE STATE OF MONTANA:

8           That an appropriate interim committee be assigned to  
9    study ways to identify and preserve rights of landowners  
10   adjacent to public land and waterways and to identify and  
11   provide for rights of the public to access and use public  
12   land and waterways. The study COMMITTEE shall COOPERATE  
13   WITH ALL INTERESTED PERSONS TO THE FULLEST EXTENT POSSIBLE

14 10.  
15 (1) identify possible methods of acquiring and  
16 maintaining access across private land to public land and  
17 waterways.

18 (2) clarify the right of the public to use waterways;  
19 including:

20 (a) identification of waterways that may be used by  
21 the public;

22 (b) further legislative definition of navigability, if  
23 necessary;

24 (c) clarification of when a prescriptive use or  
25 easement may exist; and

1       (d) use of adjacent uplands in conjunction with the  
2 right to use the waterway;

3       (3) identify use rights and title interests of  
4 adjacent landowners in land under and adjacent to waterways,  
5 including:

6       (a) the right to place fences, bridges, flumes, or  
7 other obstacles in the waterway;

8       (b) consequent taxation liabilities; and

9       (c) mineral rights;

10      (4) establish the liabilities of landowners for  
11 impeding the right of the public to use public land or  
12 waterways and the liabilities of public users with respect  
13 to violations of rights of adjacent landowners; and

14      (5) determine appropriate methods of enforcement.

15      BE IT FURTHER RESOLVED, that the committee report its  
16 findings and recommendations to the 49th Legislature.

-End-

STANDING COMMITTEE REPORT

April 8, 1983

MR. PRESIDENT

We, your committee on AGRICULTURE, LIVESTOCK AND IRRIGATION

having had under consideration HOUSE JOINT RESOLUTION EX No. 36

Keyser (Lee)

Respectfully report as follows: That HOUSE JOINT RESOLUTION EX No. 36  
third reading blue

BE CONCURRED IN

DO PASS

2nd Reading

Goodover, Graham, Haffey, Hager, Halligan, Hammond, Hazelbaker, Himsl, Jacobson, Keating, Kolstad, Lane, Lee, Lynch, D. Manning, R. Manning, Marbut, Mazurek, McCallum, Mohar, Norman, Ochsner, Regan, Severson, Shaw, Smith, Stimatz, Story, Thomas, Turnage, Tveit, Van Valkenburg, Mr. President.

Total 49

Noes: Towe.

Total 1

Excused: None.

Total 0

Absent or not voting: None.

Total 0

**HJR 36** - That HJR 36 be concurred in. Motion carried as follows:

Ayes: Aklestad, Berg, Blaylock, Boylan, Brown, Christiaens, Conover, Crippen, Daniels, Dover, Eck, Elliott, Etchart, Fuller, Gage, Galt, Goodover, Graham, Haffey, Hager, Halligan, Hammond, Hazelbaker, Himsl, Jacobson, Keating, Kolstad, Lane, Lee, Lynch, D. Manning, R. Manning, Marbut, Mazurek, McCallum, Mohar, Norman, Ochsner, Regan, Severson, Shaw, Smith, Stimatz, Story, Thomas, Towe, Turnage, Tveit, Van Valkenburg, Mr. President.

Total 50

Noes: None.

Total 0

Excused: None.

Total 0

Absent or not voting: None.

Total 0

Senator Hazelbaker moved that the committee rise and report. Motion carried. Committee arose. Senate resumed. Mr. President in the Chair. Chairman Tveit moved the adoption of the committee report. Report adopted.

At the request of the President, and without objection, the Senate reverted to Order of Business No. 2.

#### REPORTS OF STANDING COMMITTEES

**BILLS** (Tveit, Chairman):

Correctly enrolled: SB 159, SB 201, SB 214, SB 378, SB 391, SB 395, SB 410, SB 441, SB 448.

Examined by the sponsor (Berg) and found to be correct: SB 378.

Examined by the sponsor (Eck) and found to be correct: SB 391.

Examined by the sponsor (Halligan) and found to be correct: SB 410.

Examined by the sponsor (Keating) and found to be correct: SB 159.

Examined by the sponsor (Lane) and found to be correct: SB 448.

Examined by the sponsor (Smith) and found to be correct: SB 214, SB 395.

Examined by the sponsor (Turnage) and found to be correct: SB 201.

Examined by the sponsor (Tveit) and found to be correct: SB 441.

**EDUCATION AND CULTURAL RESOURCES** (Brown, Chairman):

**HB 544**, third reading copy, be amended as follows:

1. Title, line 11.

Strike: "20-9-318"

2. Title, line 12.

Following: line 11

Strike: "AND"

Insert: "20-9-316 through"

Following: "MCA;"

Strike: "REPEALING SECTIONS 20-9-316 AND 20-9-317,"

3. Title, line 13.

Strike: "MCA;"

4. Page 4.

Following: line 19

Insert: "Section 1. Section 20-9-316, MCA, is amended to read:

"20-9-316. Elementary school maximum budget schedule for 1981-82 1983-84. For 1983-84 the elementary school maximum budget schedule is:

(1) For each elementary school having an ANB of nine or fewer pupils, the maximum shall be \$15,578 \$18,627 if said school is approved as an isolated school.

(2) For schools with an ANB of 10 pupils but less than 18 pupils, the maximum shall be \$15,578 \$18,627 plus \$651 \$778.50 per pupil on the basis of the average number belonging over nine.

(3) For schools with an ANB of 18 pupils and employing one teacher, the maximum shall be \$21,428 \$25,634 plus \$651 \$778.50 per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 25.

(4) For schools with an ANB of 18 pupils and employing two full-time teachers, the maximum shall be \$34,227 \$40,926 plus \$467.70 \$487.50 per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 50.

(5) For schools having an ANB in excess of 40, the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

(a) For a school having an ANB of more than 40 and employing a minimum of three teachers, the maximum of \$1,518 \$1,809 shall be decreased at the rate of \$1.47 \$1.76 for each additional pupil until the total number (ANB) shall have reached a total of 100 pupils.

(b) For a school having an ANB of more than 100 pupils, the maximum of \$1,424 \$1,703 shall be decreased at the rate of \$1.34 \$1.61 for each additional pupil until the ANB shall have reached 300 pupils.

(c) For a school having an ANB of more than 300 pupils, the maximum shall not exceed \$1,156 \$1,382 for each pupil.

(6) The maximum per pupil for all pupils (ANB) and for all elementary schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil (ANB). All elementary schools operated within the incorporated limits of a city or town shall be treated as one school for the purpose of this schedule."

Section 2. Section 20-9-317, MCA, is amended to read:

3<sup>rd</sup> Reading

Absent or not voting: Crippen.

Total 1

**HJR 36** concurred in as follows:

Ayes: Aklestad, Berg, Boylan, Brown, Christiaens, Conover, Crippen, Daniels, Dover, Eck, Elliott, Etchart, Fuller, Gage, Goodover, Graham, Haffey, Hager, Halligan, Hazelbaker, Keating, Kolstad, Lane, Lee, Lynch, D. Manning, R. Manning, Marbut, Mazurek, McCallum, Norman, Ochsner, Regan, Severson, Shaw, Smith, Stimatz, Story, Thomas, Towe, Turnage, Tveit, Van Valkenburg, Mr. President.

Total 44

Noes: Blaylock, Hammond, Himsel, Mohar.

Total 4

Excused: Galt.

Total 1

Absent or not voting: Jacobson.

Total 1

At the request of the President, and without objection, the Senate reverted to Order of Business No. 8.

**SECOND READING OF BILLS  
(COMMITTEE OF THE WHOLE)**

Senator Hazelbaker moved that the Senate resolve itself into a Committee of the Whole, for the consideration of business on second reading. Motion carried. Senator Daniels in the Chair.

Mr. President: We, your Committee of the Whole, having had under consideration business on second reading, recommend as follows:

**HB 16** - That HB 16, third reading copy, be amended as follows:

1. Senate Standing Committee amendments.

Strike: amendments 1 through 11

2. Title, line 7.

Strike: "3"

Insert: "5.5"

3. Title, line 8.

Following: "July 1, 1983"

Strike: remainder of line 8 through "1985" on line 9

4. Page 2, line 4.

Strike: "3"

Insert: "5.5"

5. Page 2, line 5.

Following: "July 1, 1983"

Strike: remainder of line 5 through "1985" on line 6

6. Page 2, line 7.

Strike: "3"

Insert: "5.5"

7. Page 2, line 8.

Following: "July 1, 1983"

Strike: remainder of line 8 through "1985" on line 9

8. Page 2, line 19.

Following: "and 8 12.5"

Strike: "12"

Insert: "14.5"

Following: "cents"

Strike: remainder of line 19 through "THEREAFTER," on line 20

9. Page 3, line 18.

Strike: "14"

Insert: "16.5"

Following: "cents"

Strike: remainder of line 18 through "THEREAFTER," on line 19

10. Page 4, line 17.

Strike: "\$9,000,000"

Insert: "\$11,500,000"

11. Page 4, line 24.

Strike: "\$4,085,000"

Insert: "\$5,220,000"

12. Page 5, line 12.

Strike: "\$4,915,000"

Insert: "\$6,280,000"

Amendment failed as follows:

Ayes: Aklestad, Boylan, Elliott, Etchart, Galt, Graham, Hammond, McCallum, Mohar, Ochsner, Severson, Shaw, Smith, Tveit.

Total 14

Noes: Berg, Blaylock, Brown, Christiaens, Conover, Crippen, Dover, Eck, Fuller, Gage, Goodover, Haffey, Hager, Halligan, Hazelbaker, Himsel, Jacobson, Keating, Lane, Lee, Lynch, D. Manning, R. Manning, Marbut, Mazurek, Norman, Regan, Stimatz, Story, Thomas, Towe, Turnage, Van Valkenburg.

Total 32

Excused: None.

Total 0

Absent or not voting: Daniels, Kolstad, Story, Mr. President.

Total 4

That HB 16 be concurred in. Motion carried as follows:

Ayes: Aklestad, Berg, Blaylock, Boylan, Brown, Christiaens, Conover, Crippen, Daniels, Dover, Eck, Elliott, Etchart, Fuller, Gage, Galt, Goodover, Graham, Haffey, Hager, Halligan, Hammond, Hazelbaker, Himsel, Jacobson, Keating, Kolstad, Lane, Lee, Lynch, D. Manning, R. Manning, Marbut, Mazurek, McCallum, Mohar, Norman, Ochsner, Regan, Severson, Shaw, Smith, Stimatz, Story, Thomas, Towe, Turnage, Tveit, Van Valkenburg, Mr. President.

Total 50

Noes: None.

Total 0

Excused: None.

Total 0

Absent or not voting: None.

Total 0

**HB 435** - That HB 435 be concurred in. Motion carried as follows:

For the House:

McBride, Chairman  
Bertelsen  
Bardanouye

**MESSAGES FROM THE GOVERNOR**

The Honorable Dan Kemmis  
Speaker of the House  
State Capitol  
Helena, Montana 59620

Dear Mr. Speaker:

This is to inform you that I have signed the following bills this date:

House bills 130, 166, 169, 182, 219, 229, 293, 303, 391, 457, 461, and 539.

Sincerely,

Ted Schwinden  
Governor

The Honorable Dan Kemmis  
Speaker of the House  
State Capitol  
Helena, Montana 59620

Dear Mr. Speaker:

This is to inform you that I have signed the following bills this date:

House bills 24, 35, 172, 231, 266, 277, 321, 336, 349, and 441.

Sincerely,

Ted Schwinden  
Governor

The Honorable Stan Stephens  
President of the Senate  
State Capitol  
Helena, Montana 59620

The Honorable Daniel Kemmis  
Speaker of the House  
State Capitol  
Helena, Montana 59620

Dear Senator Stephens and Representative Kemmis:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby return House Bill No. 83, "AN ACT TO AMEND SECTION 13-1-106, MCA, TO REQUIRE THAT ELECTION POLLS OPEN AT 7 A.M." and recommend the attached amendment for the following reasons.

Current law provides that polls in polling places having 100 or more registered electors open at 8:00 a.m. and polls in polling places with fewer than 100 registered electors open at noon.

As introduced, House Bill No. 83 changed the 8:00 a.m. opening time to 7:00 a.m. It did not change the elector limit for noon opening. The bill,

For the Senate:  
Dover, Chairman  
Fuller  
Aklestad

April 12, 1983

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however, was amended after the introduction to raise that limit to fewer than 200 electors. The title of the bill was not amended to reflect this change.

The amendment I am proposing changes the title to reflect the content of the bill as passed.

I urge your concurrence in this amendment.

Governor's Proposed Amendments  
to HB 83

1. Title, line 7.

Following: "POLLS"

Insert: "IN POLLING PLACES HAVING FEWER THAN 200  
REGISTERED ELECTORS"

Sincerely,

Ted Schwinden  
Governor

**MESSAGES FROM THE OTHER HOUSE**

House bill concurred in as amended and returned to the House for concurrence in Senate amendments: 4/12/83

**HB 780**, introduced by Harp, Bardanouye

House bills concurred in and returned to the House: 4/12/83

**HB 682**, introduced by Shontz, Menahan, Winslow, et al.

**HJR 35**, introduced by Jacobsen, Holliday, Spaeth, et al.

**HJR 36**, introduced by Keyser, Lee, Quilici, et al.

House amendments to Senate bill concurred in: 4/12/83

**SB 446**, introduced by Thomas

Free conference committee report adopted: 4/12/83

Free conference committee report on HB 408

The Senate, on 4/12/83, appointed new members to the conference committee on HB 606.

The President appointed the following members:

Senator Shaw, Chairman  
Senator Gage  
Senator Daniels

House bill concurred in and returned to the House: 4/13/83

**HB 511**, introduced by Bardanouye, Norman, Veleber, et al.

The Senate, on 4/12/83, failed to concur in House amendments to SB 235 and appointed a conference committee, requesting that the House appoint a like committee to confer on House amendments to SB 235.

The President appointed the following members:

Senator Smith, Chairman  
Senator McCallum  
Senator Haffey

HOUSE JOINT RESOLUTION NO. 36

INTRODUCED BY KEYSER, LEE, QUILICI, HAND, IVERSON,  
J. HAMMOND, CURTISS, D. BROWN, RAMIREZ, DEVLIN

5 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF  
6 REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN  
7 INTERIM STUDY TO IDENTIFY AND PROVIDE FOR PRESERVATION OF  
8 THE RIGHTS OF LANDOWNERS ADJACENT TO PUBLIC LAND AND  
9 WATERWAYS AND TO IDENTIFY AND PROVIDE FOR RIGHTS OF THE  
10 PUBLIC TO ACCESS AND USE PUBLIC LAND AND WATERWAYS;  
11 REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE  
12 LEGISLATURE.

14 WHEREAS, the right of the public to use waterways for  
15 recreational and other purposes and the related issue of  
16 navigability are unsettled in law; and

17 WHEREAS, ownership rights in land underlying waterways  
18 and rights of adjacent landowners to place obstacles in  
19 waterways or to restrict use of streambanks are also  
20 unsettled; and

21 WHEREAS, the right of the public to use public land is  
22 being inhibited by restrictions of access across private  
23 adjoining land; and

24 WHEREAS, there is an increasing number of disputes  
25 between private landowners and public users concerning the

1 use of public land and waterways; and  
2 WHEREAS, both the adjacent private landowners and the  
3 public have substantial interests involved in the resolution  
4 of these conflicts.

6 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE  
7 OF REPRESENTATIVES OF THE STATE OF MONTANA:

8           That an appropriate interim committee be assigned to  
9    study ways to identify and preserve rights of landowners  
10   adjacent to public land and waterways and to identify and  
11   provide for rights of the public to access and use public  
12   land and waterways. The study COMMITTEE shall COOPERATE  
13   WITH ALL INTERESTED PERSONS TO THE FULLEST EXTENT POSSIBLE  
14   TO:

15 (1) identify possible methods of acquiring and  
16 maintaining access across private land to public land and  
17 waterways;

18 (2) clarify the right of the public to use waterways,  
19 including:

20 (a) identification of waterways that may be used by  
21 the public;

22 (b) further legislative definition of navigability, if  
23 necessary;

24 (c) clarification of when a prescriptive use or  
25 easement may exist; and

1        (d) use of adjacent uplands in conjunction with the  
2        right to use the waterway;

3        (3) identify use rights and title interests of  
4        adjacent landowners in land under and adjacent to waterways,  
5        including:

6        (a) the right to place fences, bridges, flumes, or  
7        other obstacles in the waterway;

8        (b) consequent taxation liabilities; and

9        (c) mineral rights;

10       (4) establish the liabilities of landowners for  
11       impeding the right of the public to use public land or  
12       waterways and the liabilities of public users with respect  
13       to violations of rights of adjacent landowners; and

14       (5) determine appropriate methods of enforcement.

15       BE IT FURTHER RESOLVED, that the committee report its  
16       findings and recommendations to the 49th Legislature.

-End-